

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

TRACY COLLIER,	)	NO. ED CV 11-1278-CBM(E)
	)	
Petitioner,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
S. HUBBARD,	)	
	)	
Respondent.	)	
_____	)	

Petitioner filed a "Petition for Writ of Habeas Corpus by a Person in State Custody" on August 10, 2011. The Petition challenges a "restitution fine" assertedly imposed as part of the sentence in a 1992 San Bernardino Superior Court criminal case.

This Court lacks jurisdiction to entertain the Petition. A Petition challenging only a restitution fine fails to satisfy the "in custody" requirement for habeas corpus jurisdiction. See Bailey v. Hill, 599 F.3d 976 (9th Cir. 2010). Therefore, the Petition must be denied and dismissed without prejudice.

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1 Even if this Court had habeas jurisdiction over the present  
2 Petition, the result would be the same, because the petition is  
3 "second or successive," within the meaning of 28 U.S.C. section  
4 2244(b). Petitioner previously challenged the same 1992 San  
5 Bernardino Superior Court judgment in a prior habeas corpus petition  
6 filed in this Court. See Collier v. Prunty, CV 96-0248-AAH(E). On  
7 May 17, 1996, this Court entered Judgment in Collier v. Prunty, CV 96-  
8 0248-AAH(E), denying and dismissing the prior petition with prejudice.  
9 The basis for this denial and dismissal was a procedural default by  
10 Petitioner. Section 2244(b) requires that a petitioner seeking to  
11 file a "second or successive" habeas petition first obtain  
12 authorization from the court of appeals. See Burton v. Stewart, 549  
13 U.S. 147, 157 (2007); Barapind v. Reno, 225 F.3d 1100, 1111 (9th Cir.  
14 2000). "[A] denial on grounds of procedural default constitutes a  
15 disposition on the merits and thus renders a subsequent § 2254  
16 petition or § 2255 motion 'second or successive' for purposes of the  
17 AEDPA." Henderson v. Lampert, 396 F.3d 1049, 1053 (9th Cir.), cert.  
18 denied, 546 U.S. 884 (2005); accord McNabb v. Yates, 576 F.3d 1028,  
19 1029 (9th Cir. 2009). A petition need not be repetitive to be "second  
20 or successive," within the meaning of 28 U.S.C. section 2244(b). See,  
21 e.g., Calbert v. Marshall, 2008 WL 649798, at \*2-4 (C.D. Cal. Mar. 6,  
22 2008); Miles v. Mendoza-Powers, 2007 WL 4523987, at \*2-3 (E.D. Cal.  
23 Dec. 19, 2007). Petitioner evidently has not yet obtained  
24 authorization from the Ninth Circuit Court of Appeals. Consequently,  
25 even if this Court had habeas corpus jurisdiction, the Court could not  
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1 entertain the present Petition. See Burton v. Stewart, 549 U.S. at  
2 157.

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4 For all of the foregoing reasons, the Petition is denied and  
5 dismissed without prejudice.

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7 LET JUDGMENT BE ENTERED ACCORDINGLY.

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9 DATED: November 3, 2011.

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13 \_\_\_\_\_  
14 CONSUELO B. MARSHALL  
15 UNITED STATES DISTRICT JUDGE

16  
17 PRESENTED this 16th day of  
18 August, 2011, by:

19  
20 \_\_\_\_\_  
21 /S/  
22 CHARLES F. EICK  
23 UNITED STATES MAGISTRATE JUDGE  
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